

JS 44 (Rev. 12/12)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Tom Winters

**DEFENDANTS**

Casella Waste System, Inc., et al.

(b) County of Residence of First Listed Plaintiff Bradford, PA  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Rutland, VT  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

David Chrispell, Esq.  
815 Busti Sugargrove Rd.  
Jamestown, NY 14701 (716) 664-1558

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS--Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
29USC1161

Brief description of cause:  
Negligence (Premises) and Failure to send Cobra notice.

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$  
75,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE  
7/29/2014

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

for the

**Civil Action No.**

*Signature of Clerk or Deputy Clerk*

for the

**Civil Action No.**

*Signature of Clerk or Deputy Clerk*

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

TOM WINTERS,

Plaintiff,

vs.

CASELLA WASTE SYSTEM, INC, individually  
and in its Capacity as Fiduciary and Plan  
Administrator of the CASELLA WASTE  
SYSTEM, INC. EMPLOYEE BENEFIT PLAN  
and CASELLA WASTE MANAGEMENT OF  
N.Y., INC.,

Defendants.

)  
) CIVIL ACTION

)  
) NO.

)  
) JURY TRIAL DEMANDED.

)  
) Plaintiff's Counsel:

) David Chrispell, Esq.

) NY Id. No. 2514016

) 815 Busti Sugargrove Rd.

) Jamestown, NY 14701

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)  
) Richard Shenkan

) Shenkan Injury Lawyers, LLC.

) 6550 Lakeshore St.

) West Bloomfield, MI 48323

) T: (248) 562-1320

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) *Pro Hac Vice Motion to be Filed*

### **COMPLAINT**

1. Plaintiff Tom Winters brings this action to secure redress from Defendant Casella Waste System, Inc. ("Employer / Plan Administrator") for violations of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 USC §§1001 *et seq.* More specifically, Plaintiff alleges violation of the amendments to ERISA in the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), 29 USC §§1161-1168, and also pursuant to 28 USC §1331.

2. COBRA requires that an employer must provide the plan administrator with notice of any qualifying event concerned a covered employee or qualified beneficiary within thirty days of that qualifying event, and the plan administrator then must notify the qualified individual of his rights under COBRA within fourteen days of receiving that notice. An employee experiencing a qualifying event has sixty days from the coverage termination or date of notice of COBRA rights, whichever is later, to elect to continue his benefits under COBRA.

3. COBRA creates a private cause of action for employees whose rights under COBRA, including rights to notice, are violated.

4. When an employee is provided health insurance benefits until a time later than his last day of work, the exhaustion of a plaintiff's right to health insurance coverage under the employer is the qualifying event under COBRA.

5. Plaintiff alleges that Defendant violated COBRA by failing to provide timely COBRA election notices following Defendant's termination of Plaintiff's health insurance benefits.

6. Plaintiff also alleges negligence on behalf of Defendant Casella Waste Management of N.Y., Inc. ("Property owner") for negligent failure to properly maintain its premises so that the premises was reasonably safe for use by Plaintiff.

### **VENUE AND JURISDICTION**

7. This Court has jurisdiction under 28 U.S.C. §1331, 29 U.S.C. §1132(e)(2), and 28 U.S.C. §1391.

8. Venue and personal jurisdiction in this district are proper for the reason that the unlawful acts alleged occurred within this District.

### **PARTIES**

9. Plaintiff is an individual who resides at 121 Prospect St., Sayre, Pennsylvania.

10. Defendant Casella Waste Systems, Inc. ("Casella") is a Delaware corporation, that has a principal place of business in Elmira, Chemung County, New York and its principal corporate office at 25 Greens Hill Lane, Rutland, VT 05701. The Chief Executive Officer of Casella is John W. Casella.

11. Casella is a publicly traded company which reported revenues for the first quarter of 2014 in the amount of \$118.9 Million.

12. Casella has implemented an Employee Benefit Plan which provides, inter alia, health benefits to its employees, which is partially insured through Blue Cross and Blue Shield and partially self-funded. The plan has more than 1,200 participants. Plaintiff was one of those participants.

13. Defendant Casella Waste Management of N.Y., Inc. ("Property Owner") is a New York corporation, that owns the subject real estate leased to Casella Waste System, Inc. Its principal corporate office is located in the same building as Casella Waste Systems, Inc. at 25

Greens Hill Lane, Rutland, VT, 05701. Like Casella, the Property Owner's Chief Executive Officer is John W. Casella.

14. Casella Waste Management of N.Y., Inc. is a separate and distinct business from Plaintiff's sole Employer, Casella Waste Systems, Inc.

15. Casella Waste Management of N.Y., Inc. is owned and managed by officers and/or directors of Casella Waste Systems, Inc.

16. Plaintiff was, at all relevant times, an employee of Casella Waste Systems, Inc. only, and no dual employment relationship existed.

17. Casella Waste Management of N.Y., Inc. Casella Waste Systems, Inc. and its tenant, Casella Waste Systems, Inc., at the direction of John Casella, serving as CEO of both enterprises, have orchestrated a system whereby when Casella has actual and/or constructive notice of a dangerous condition (such as the subject defective stairs at issue), at property owned by Casella Waste Management of N.Y., Inc. and leased to Casella Waste Systems, Inc., when an agent of Casella reports a defect to Casella management.

18. At all relevant times, Casella Waste Management of N.Y., Inc. had the absolute right to perform inspections at its discretion at any of its premises leased to Casella at any time.

#### **FACTS**

19. At the time of Plaintiff's injury, Plaintiff was employed by Defendant Employer as a garbage truck driver.

20. Through Plaintiff's employment with Defendant Employer, Plaintiff was provided with a group health plan. Blue Cross Blue Shield are believed to have acted as a third party administrator for the self-funded plan.

21. On or about August 6, 2012, Plaintiff was injured in a work-related incident, wherein Plaintiff fell through a stairs at premises owned and maintained by Casella Waste Management of NY, Inc. "Property Owner").

22. At all relevant times, Defendant Property Owner had the Elmira, New York facility under its exclusive care, custody, control, supervision, and maintenance, for the use and convenience of business visitors, employees, members of the public, and in particular, Plaintiff.

23. At all relevant times, Plaintiff's presence on Defendant Property owner's premises was lawful, he was a business invitee on the premises.

24. August 6, 2012 was Plaintiff's last day of active work with Defendant Employer.

25. Due to the work-related injury on the premises of Property Owner, Plaintiff suffered a subsequent fall at his home where he broke his clavicle and obtained additional injuries and worsened other injuries.

26. Since August 6, 2012, Plaintiff has been unable to return to work.

27. Plaintiff filed a Workers Compensation claim in Pennsylvania on August 14, 2012 which is still pending.

28. Among the injuries caused by the falls are depression and anxiety which had been treated with Zoloft, having been paid by the Employee Benefits Plan.

29. Without any notice, the Employee Benefits Plan abruptly terminated coverage which resulted in an adverse spiraling of his psychiatric state – causing Plaintiff to self-medicate with alcohol. According to Dr. Richard E. Fischbein, an expert psychiatrist, the affect of the abrupt termination of this psychotropic drug has resulted in Plaintiff's dire need for in-patient alcoholic rehabilitation.



30. The Employer is believed to have terminated insurance coverage on August 1, 2013.

31. Following Defendant Employer's termination of coverage of Plaintiff, Plaintiff did not receive a proper COBRA election notice as required by 29 U.S.C. §1166.

32. This fact is confirmed when Scott C. Slavick, record custodian of Casella, provided all records in connection with Thomas Winter's employment when such records were sought in connection with the worker's compensation proceeding. The records produced to which he affirmed were exhaustive did not include a COBRA notice. A copy of the Affidavit of Compliance is attached hereto as **Exhibit A**.

33. To date, Plaintiff has not received a proper COBRA election notice.

**COUNT I – COBRA NOTICE VIOLATION**  
**Against Defendant Casella Waste System, Inc.**

34. Plaintiff incorporates paragraphs 1-33.

35. COBRA defines "covered employee" as "an individual who is (or was) provided coverage under a group health plan by virtue of the performance of services by the individual for 1 or more persons maintaining the plan." 29 U.S.C. §1167(2).

36. At all relevant times, Plaintiff was covered employee covered under the provisions of COBRA. 29 U.S.C. §1167(2).

37. At all relevant times, Defendant Employer was the plan administrator, employer, and/or plan sponsors pursuant to the provisions of ERISA and the COBRA requirements. 29 U.S.C. §1167(4); 29 U.S.C. §1002(16)(A), (B).

38. Defendant Employer provided Plaintiff with a "group health plan" as employees and/or beneficiaries.

39. Defendant Employer's termination of Plaintiff's health insurance coverage on August 1, 2013 was a "qualifying event" pursuant to 29 U.S.C. §1163(2).

40. Following the termination of Plaintiff's health insurance coverage, he was not timely notified of his rights pursuant to COBRA, in violation of 29 U.S.C. §1166(a)(2), (c).

41. The Defendant Employer's failure to timely provide COBRA notice was done in bad faith, was willful and in reckless disregard of the law.

42. As a direct and proximate result of the aforesaid unlawful acts of Defendant Employer, Plaintiff did not receive timely notice of his COBRA election rights and has suffered damages, including, but not limited to, the loss of health insurance benefits, the increased cost of obtaining health insurance benefits, the loss of coverage for medical expenses, increase financial debt and distress, the aggravation and worsening of health conditions, and mental and emotional distress.

WHEREFORE, the Court should enter judgment in favor of Plaintiff and against Defendant Casella Waste System, Inc. in whatever amount is shown to be established by the proofs in this cause, including, but not limited to Plaintiff's actual damages, the remedies/damages/penalties available to them as set forth in 29 U.S.C. §1132 and other damages/relief that this Court deems appropriate, together with interest, costs, and reasonable attorney fees.

**COUNT II – NEGLIGENCE**  
**Against Casella Waste Management of N.Y., Inc.**

**A. Compensatory Damages**

43. Plaintiff incorporates paragraphs 1-42.

44. At all relevant times, Defendant Property Owner had a duty and responsibility to operate and maintain, in a proper and safe condition, the premises on which Plaintiff was injured.

45. At all relevant times, Defendant Property Owner had a duty to repair, supervise and/or maintain the dock and stairs on which Plaintiff was injured.

46. At all relevant times, Property Owner retained control over the premises or was contractually obligated to perform maintenance and repairs and/or had the right to inspect the premises and contracted for the repair of the dangerous defect to the stairs.

47. The subject property is located at 1618 Sears Rd., Horseheads, New York, 14903 which was leased to Employer.

48. At all relevant times, Plaintiff acted with reasonable caution and care for his own safety.

49. At all relevant times, the Property Owner and/or agents working on its behalf, were on actual notice that the steps were dangerous, in considerable unsafe disrepair, and should not have been used.

50. The Property Owner or its agents had contracted with an entity to repair the stairs; however, failed to close-down the stairs until such were repaired. The name of the entity and person(s) to whom were contracted to perform repairs are presently unknown.

51. No warning signs or tape were placed on the dangerous stairs to alert Plaintiff and others of the known inherently dangerous condition.

52. The failure to post warnings and the hazardous condition of the stairs relating to the inadequate design and/or structure violated applicable statutes, regulations, and administrative and building codes.

53. Property Owner and/or Employer is believed to have deliberately failed to preserve evidence, including photographic evidence, of the state of the disrepair so that

Plaintiff's expert can reasonably opine as to all statutory, regulatory, and administrative / code violations.

54. At all relevant times, Plaintiff was severely injured through no fault of his own.

55. At all relevant times, Plaintiff was a business invitee.

56. At all relevant times, Plaintiff has acted to mitigate any and all damages sustained as a result of the dangerous premises owned and operated by Defendant Property Owner.

57. The dock and stairs where Plaintiff was injured was in disrepair, and created an unreasonably dangerous condition on the property, which led to the stairs breaking beneath Plaintiff, who used the dock and stairs for their intended and known purpose.

58. Defendant Property Owner's failure to keep the dock and stairs in a reasonably safe condition caused physical and mental harm to Plaintiff as a result of the dangerous conditions caused by the part of the land controlled and maintained by Defendant Property Owner.

59. In the alternative (or in addition), Defendant Property Owner's exercise of reasonable care should have and would have discovered the condition and unreasonable risk involved herein, and should have made the condition safe, though failed to do so.

60. In the alternative (or in addition), Defendant Property Owner concealed or failed to disclose to Plaintiff the dangerous condition on the property, which involved an unreasonable risk of physical harm to Plaintiff.

61. In the alternative (or in addition), at all relevant times, Plaintiff did not know or have reason to know of the dangerous conditions or risks involved, though Defendant Property Owner knew or had reason to know of such dangerous conditions, appreciated, realized, or

should have realized the risk involved, and had reason to expect that Plaintiff would not discover the dangerous condition or realize the risk.

62. In addition, Defendant Property Owner further breached its duty to exercise reasonable care under the circumstances in the following ways:

- a. Negligent hiring, training, supervision, and retention of maintenance personnel to ensure that reasonable inspections were performed on a reasonably frequent basis and that the dangerous conditions at issue were detected and adequately remedied;
- b. Failing to maintain its premises in a reasonably safe condition for the contemplated use thereof and for the purpose for which the invitation to Plaintiff was extended;
- c. Failing to make a reasonable inspection of the premises;
- d. Failing to detect the dangerous condition of the dock and stairs;
- e. Failing to implement adequate safeguards, including warnings;
- f. Failure to replace and/or repair the dock and stairs which were in disrepair;
- g. Negligent maintenance;
- h. Negligent inspection;
- i. Negligent repair; and,
- j. Otherwise failing to exercise due care under the circumstances as may be determined through discovery or at the time of trial.

63. As a direct and proximate result of Defendant Property Owner's negligence, Plaintiff suffered numerous severe injuries, including injury to both of his shoulders, hips, and ribs, emotional distress, lost earnings, reduced or permanently impaired earning capacity, deprivation of the ordinary pleasures of life, punitive damages, past and future medical treatment and costs.

**b. Punitive Damages**

64. Plaintiff incorporates paragraphs 1-67.

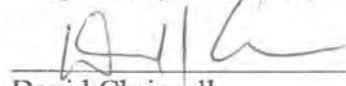
65. Property Owner, or its agents, KNEW that the stairs were in disrepair.

66. Property Owner, or its agents, commissioned an entity to repair the dangerous condition though never bothered to alert people, such as Plaintiff, not to use the steps.

67. The Property Owner acted recklessly, wantonly, and with a conscious disregard to the known risk that anyone who would use the dangerous stairway would likely fall through the stairs, failed to repair the stairwell or otherwise stop people from using it (i.e., marking it off with tape, barriers, or signage). Such conduct has a high degree of moral culpability, was so reckless and wantonly negligent as to be the equivalent with and in conscious disregard to the rights and safety of the general public, including Plaintiff.

WHEREFORE, the Court should enter judgment in favor of Plaintiff and against Defendant Casella Waste Management of N.Y., Inc. in whatever amount is shown to be established by the proofs in this cause, including an award of punitive damages, together with interest, costs, and reasonable attorney fees.

Respectfully submitted,

  
David Chrispell  
815 Busti Sugargrove Rd.  
Jamestown, NY 14701  
T: (716) 664-1558  
F: (716) 664-2463

**JURY DEMAND**

Plaintiff demands trial by jury.

  
David Chrispell

**AFFIDAVIT OF COMPLIANCE**

I, SCOTT SCARICK, the undersigned, being duly sworn according to law, depose and say, pursuant to 18 Pa. CS. §4904, as follows:

- (1) I am the duly authorized custodian of records for Casella Waste Systems, Inc.
- (2) The records attached hereto are true and correct copies of all personnel related records in my custody pertaining to Tom Winters.
- (3) A careful search has been made by me or at my direction and supervision, and the records produced constitute all records relating to Tom Winters' employment.

Scott Scarick  
Signature of Custodian

7/3/14  
Date

